Supreme Court, U.S.
FILED

98 520 JUL 21 1998

OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

October Term, 1998

Clara Palm
and as Surviving Parent
of Anthony Robert Palm, deceased

Petitioner (s)

v.

Las Vegas Metropolitan Police
Department , a political Sub-division
of Clark County,Clark County
a political subdivision of the state of Nevada,
and Merl Sage, and does I through v, inclusive

Respondent (s)

On Petition For Writ Of Certiorari
United States Court of Appeals
for the ninth circuit

PETITION FOR WRIT OF CERTIORARI

Clara Palm
4452 Newton Drive
Las Vegas, Nv 89121
702/456-4352

ISSUES PRESENTED FOR REVIEW

1. WHETHER ALL FACTS WERE GIVEN TO COURTS TO REVIEW IN ORDER TO COME TO A DECISION IN FAVOR OF DEPENDENTS.

2. WHETHER THERE WAS A SEXUAL ASSAULT BEATING AND ATTACK OF A POLICE OFFICER.

3.. WHETHER VIOLATIONS OF PROCEDURES WERE COMMENCED AT TIME OF INVESTIGATION.

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PETITION FOR WRIT OF CERTIORARI

Clara Palm respectively petition for a Writ of Certiorari to review civil suit entered in The Federal Court in the state of Nevada, County of Clark, by the California Third District Court of Appeals.

STATEMENT OF JURISDICTION

Federal District Court State of Nevada denied dismissal on June 6, 1996. Federal District Court ruled in favor of defendant on April 15, 1996. Appeal for civil case filed through Ninth Court on May 9, 1997. Ninth Court ruled in favor of defendants on April 29, 1998.

STATEMENT OF CASE

On March 21, 1995 off duty police officer Merl Sage of the Las Vegas Metro Police Department shot and killed Anthony Robert Palm in what was called an alleged rape, assault, and attack on a police officer.

The appellee case presented to the courts as a justifiable shooting, stating that the decedent lunged at the police officer.

STATEMENT OF FACTS

The defendant presented to the court what was called a vicious and sadistic attack by the decedent. Records and documents will show questionable evidence presented to the courts by the defendant.

The victim was allegedly beaten about the head and face and also choked. Exhibit 1 - show no evidence of trauma to face, neck or head (emergency room photos).

The victim was allegedly raped. Exhibit 2 will show no semen or secretion obtained from victim. Claim of semen on underpants of decedent. Terry Cook, Criminalist stated, "The semen dejected in TIC 2 (underpantsa0 could have originated from the suspect."

The decedent allegedly lunged at police officer. Statements given by witnesses during voluntary statements taken gave no mention of lunging. Lunging was introduced by Detective D. Hatch during questioning of officer Sage.

Officer Sage stating he forgot or did not have time to identify himself as a police officer. He stated everyone knew him, this should not be acceptable by law. His appearance as a common citizen would not make a command for an assault to stop or obey his orders.

Patricia Woodall, Victim

***Beating and Rape:**

"And then he was jut there grabbing and he wrestled me to the ground and beat my face and my head and just kept trying to choke me and beat my head. He had my pants off and he raped me and he beat my head and choked, and choked, and choked and , uh; un got it."

Beating of head and face should have had substantial injuries.

Q: "Did he actually penetrate you?"

A: "Yes, he did."

If in fact penetration was made, questionable semen found on underwear of decedent not found on victim or any other fluids.

****Lunging:**

"And uh and out of the corner of my eyes I saw – I saw some movement, but I can't – I saw some movement, okay, and then he fired twice and the guy fell to the ground."

No lunging, seeing some movement did not describe the movement of the decedent.

Billy Mizell

****Lunging:**

"He didn't lunge qt him, but he was moving towards him , and the policeman fired twice and they guy fell down never moved again." (page 2)

***Beating and Rape:**

Q: "Okay, by chance did you happen to see the suspect striking the victim on the ground?" (page 4)

A: "No, I never saw that. That's why as I watched all I could see was like uh, him trying to keep her from getting up."

"I never saw any blows" (page 38)

Lunging: Seemed to move at the policeman

Carol Jean Ewing

***Rape:**

"They were arguing and then the black man took his pants down and she pulled hers down and they began having sex."

***Beating:**

Q: Did you see anybody hitting each other or slapping each other or anything like that?" (page 3)

A: "No, at the time I was watching them, I didn't see anybody hitting anybody.

Janice Cubim

***Beating:**

"And I saw him punch her three or four times on the head around the face."

No trauma and signs.

Margaret Rose Sage

***Beating and Rape:**

"At one point you could literally see he was choking her." (page 2)

"She had a lot of bruises around her neck."

"I said, Merl, I think he's raping her.

****Lunging:**

"

He started to pull up his pants and then he took two steps forward right at Merl and Merl shot him twice." (page 3)

Merle Sage

****Lunging:**

"He pulled them straight up and at the same time again took un three, four step towards me at uh which time I shot him twice.

A: "Uh, yes it was. He, as he when he got up, he pulled his pants up at the same time and then one, the same movement or the same motion, pulling his pants up at the same time and moving towards me."

Was lunging implanted by Detective D. Hatch, does not match football tackle position.

Q: "Okay, when he was coming toward you, was it in a real rapid movement, all one movement, coming up pulling the pants on, then lunging at ya?"

***Beating and Rape:**

"No, there's no doubt in my mind whatsoever. I knew that this lady was in trouble and by her screams and watching him beating on her and the sexual assault at the same time, I knew I had to do something; I felt truly that her life was in danger.

Distance:Q: "Okay, so it would indicate that he was within five to ten feet of you when you shot him.

*/** Footnotes

Voluntary Excerpts from voluntary statements made 3/21/95

INVESTIGATIVE PROCEDURES

There are questionable investigative procedures followed by the Las Vegas Police Department the morning of March 21, 1995. Defendant's counsel needs to justify as to why the following procedures were conducted.:

1. Evidentiary items removed prior to coroner' arrival to the scene of the crime (page 2-3 Coroner's Investigative Report). "All of the evidentiary items found on the grass lawn were recovered prior to my arrival. LVMPD I. D. Specialist pointed out where impounded items were recovered from".
2. Autopsy and blood test performed prior to family being notified and body being identified.

   Page 1 Coroner Autopsy Report. Autopsy performed by

   G. Sheldon Green. MD. Chief

   Medical, Examiner at 1206 hours. Blood work collected 12:30 p.m.
3. Body identified by fingerprints by Kelly Morris (CCME) 14:30. Family not notified until 13:10 and refusal made by Coroner' office to let family ID body.
4. By ID of license plate at 7:00 a.m., decedent's name and address was known to be two blocks from shooting.
5. Witnesses to state victim at inquest was not victim at crime scene.

CLARK COUNTY CORONER
MEDICAL EXAMINER
1704 Pinto LANE
LAS VEGAS, NEVADA

NAME PALM, ANTHONY ROBERT AGE 21
DATE 03/21/95 CASE # CASE #95-01084

Today, 03/21/95 at approximately 0840 hours, I responded to a report of a death at the 4400 block of Dennis Way, Las Vegas, Nevada as requested by Mary (P# 517) of the LasVegasMetropolitanPolice Department (LVMPD) Dispatch. The death was reported as the result of an officer involved shooting Upon arrival at approximately 0905 hours. I was met by Sgt. K.Manning, LVMPD, who related the following information. Earlier this morning at approximately 0558hours,the Decedent reportedly was physically battering and sexual assaulting a young female on the front grassy lawn at the residential street corner lot of 4437 Dennis Way. Directly across the street to the west of the incident scene, an off-duty LVMPD Police Officer looked out his bedroom window and observed the assault in progress. The officer telephoned 911 and turned the phone over to his wife.The officer proceeded from his residence and approached the decedent.Sgt. Manning continued by relating the following course of events.

The officer witnessed the decedent on top of the female, and was sexually assaulting her. The officer verbally confronted the decedent. The decedent reportedly stood up and pulled up his pants. The decedent reportedly was deranged. Suddenly, the decedent lunged towards the officer. The officer subsequently discharged his seem-automatic .40 caliber handgun twice, striking the decedent. The decedent collapsed onto the sidewalk to his current position. The decedent had no vital signs. Medical assistance arrived. No aid was rendered to the decedent but the assaulted female victim was transported to the University

Medical Center.At the time of obtaining the preceding information thefemale'sidentity and medical condition was not available.Upon being led to the decedent at approximately 0910 hours, I reviewed the incident scene. The decedent's body was lying supine on the sidewalk and covered by a white sheet. To the right (NORTH) of the body, there was a parked tan-colored vehicle, a ChryslerLeBaron with Nevada license plate # CLH492.

All of the evidentiary items found on the grass lawn were recovered prior to my arrival. LVMPD ID Specialist Cabrales pointed out

Where the impounded items were recovered from

The female's clothing was reportedly laying approximately 10 feet in a southwest direction from the decedent. Two expended .40 caliber casings were reportedly recovered approximately 20 feet southwest from the decedent. Polaroid photographs are attached

Upon removing the sheet,I viewed a Negro male lying supine on the sidewalk. The decedent was fully clothed with his arms and legs sprawled. I observed what appeared
to be blood on the decedent's shirt around the upper right chest area. There were two areas of perforation discovered on the clothing that appeared to be bullet holes. One was noted on the upper chest area of the both the sweatshirt and tanktop t-shirt. To other hole was noted on the jacket's top right shoulder area near the collar and on the sweatshirt. There were obvious lawn stains with pieces of grass viewed on the front lower leg areas of the sweatpants, along with spots of what appeared to be blood. In lifting up the decedent's shirt for examination purposes, there were several bone-like fragmentsdscovered lying on the decedent's right upper chest area and covered in what appeared to be blood.Around the groin area under the decedent's boxer shorts, several pieces of grass were discovered.While examining the decedent, no apparent life signs were discovered The body was warm to the sense of touch. There was no presence of rigor mortis and no lividity was

noted. There was a healed scarred area of a anoticeable size noted on the forehead. I detected what appeared to be two gunshot wounds; onewound was located on the upper mid-chest area and the other wound was on the top right clavicle area. There was a small skin abrasion found on the inner left wrist area.On the decedent's hands, there appeared to be smeared blood on both of the palms and inner parts of the fingers. LVMPD ID Specialist bagged both of the decedent's hands for evidential purposes There was a brown-colored wallet discovered in the front left chest pocket of the jacket. The wallet was removed to aid inidentification of the decedent His Nevada driver's license was removed and place back into his pocket.

OFFICE OF THE CORONER MEDICAL EXAMINER, CLARK COUNTY, NEVADA
1704 Pinto Lane, Las Vegas, Nevada 89106

case#95-01084
Decedent Palm, Anthony Robert AKA
Status S DOB 4-15-73
Residence Address 4452 Newton Fr., Las Vegas Nv. 89121 SS #/ 315-92-4127 Height 69.00
Tel. No. (702) 456-4352 Desc: Sex M Race N Age 21
Weight 145.00 Hair Black Eyes Brown

Scars/Tattoos & Other Identifying features
Scaring on the forehead:
Mustache and Goatee.

Rigor Mortis None Liver Mortis None
Clothing Green Plaid Jacket: Gray Yank Top & Sweatpants: White Swatshirt & Socks:
Drugs & Medications None Striped Boxer Shorts: And Black Athletic Shoes

Occupation None Employed by Unemployed
Agency Reporting Lvmpd Date & Time Reported 03/21/95 08:40
Location of body Sidewalk Area at 4437 Dennis Wy.. Las Vegas, Nv. 89121
Type of Death V At Work: N

Circumstance	Date	Time
Reported to Agency by	3-21-95	06:01
Name & Address	Off-Duty LVMPD Officer	
Last Seen Alive by	032195	05:58
Name & Address	Off-Duty LVMPD Officer	
Found Dead by	032195	06:01
Name & Address	Off-Duty LVMPD Officer	
Pronounce Dead by	032195	09:15
Name & Address	William Gazza, CCME	
Body Viewed by	032195	09:15
Name & Address	William Gazza, CCCME	
Identified by	032195	14:30
Name & Address	fingerprints, Kelly Morris (CCME)	

Witnesses The Decedent's Victim, OffDuty Officer and Four Residential Witnessed

Law Enforcement Agency LVMP

officers Det. Keeton, Det. Hatch, Det Mikolaninis, Sgt. Manning, Sgt. Hefner, I>D> Cabrales, Ford and McLaughlin
Property Receipt # 45076
In Custody of Prop. Left @ Decedent (seal #871554) (#45303 @ CCCME)
Custody of Body: Removed by Bunker to CCME
Driver Chris Barnum
Assisted by Mike Shadler
Requested by As Per Rotation

10

Death Notification Next of Kin Clara Palm
Relationship MotherAddress 4452 Newton Dr., Las Vegas, Nv. 89121 Tel No. (702) 456-4352Other #1
John Palm Relationship BrotherAddress 4452 Newton Dr. , Las Vegas, Nv 89121 Tel No. (702) 456-4352

Contacted C. Palm In Person at her Residence
Notification made by William Gazza, CCME Date 03-21-95 time 13:10

Pancreas: The pancreas is of normal size and configuration. Cut surfaces show normal gray-tan lobular architecture.

Organs of the neck: The anterior strap muscles are intact and normal. there is no hemorrhage.The thyroid gland is of normal esophagus and hypopharynx are intact and appear normal. The upper trachea, larynx, epiglottis, and hyoid bone are intact. The tongue appears normal.

Head: The scalp is reflected in the usual coronal fashion. There are no gross abnormalities of scalp or skull. There is on epidural, subdural, or subarachnoid hemorrhage. The configuration of the brain is normal. It neighs 1520 grams. Serial cut surfaces if the cerebrum in the coronal plane show no hemorrhages, tumors or other visible abnormalities. The internal cerebra; architecture is normal. External and cut surfaces of the brain stem and cerebellum are intact and normal. The cervical sine id intact.

Path of the Missiles: One bullet struck the right anterior chest at a point 5 inches below the suprasternal notch and 2 inches to the right of the midline: passing from right toward left, slightly from front-toward back, and downward in a head-to-toe direction. It destroyed the fourth costal cartilage, perforated the pericardial sac. destroyed major portions of the heart. passed through the lower lobe of the left lung, and was recovered from the left chest wall approximately in the eight intercostal space.

The bullet which struck the posterior superior aspect of the back of the shoulder passed downward in head-toward-toe direction and right-toward-left. It entered the right hemithorax through the second intercostal space, perforated the right hemithorax through the second intercostal space, perforated the right lung, passed through the spine at the T-7 level. this wound involved the vertebral body but apparently did not involve the spinal cord. The bullet then perforated the stomach and the spleen, and was recovered adjacent the the splenic bed.

Both bullets proved to be .40 caliber "Silvertip" projectiles with prominent mushroom-type deformity. That are cleaned and delivered to the hand of Officer Ford at the time of recovery.

Foot note excerpts from Coroner's report 3-21-95

LVMPD REPORT	CRIMINALIST- Terry Cook	P#245	CASE#950321-0282				
EVIDENCE	ANALYZED	SEROLOGICAL GROUPINGS					
	BOOKED BY	EVIDENCE	ABO	SCRETOR	SEMEN	EsD	PGM st	
	pkg. item	DESCRIPTION		ANTIGENS	FACTORS			
TLC 1	EBBERT	vaginal/woodall			neg			
	SAK 1							
	EBBERT	rectal/Woodall			neg			
	SAK 2							
	EBBERT	Oral/Woodall	blood		neg			
	SAK 3		indicated					
	EBBERT	secretions/WOODALL	blood		NEG			
	SAK 4		indicated					
	EBBERT	combed						see conclusion
	SAK 5	pubic/Woodall						see conclusion
	EBBERT	debris/Woodall						see conclusion
	SAK 6							
	EBBERT	whole blood/Woodall	A					
	SAK 7							
	EBBERT	saliva stain/Woodall		A & H				
	SAK 8							
TLC 2	FORD	whole blood/ Palm	O	lea-b+			2+1	
	ME kit 1			(secretor)				
	FORD	underpants/palm		H	pos		2+1	
	MEkit 2							
	FORD	penile/Palm		H	pos		NR	
	MEkit 3							
	FORD	debris/Palm						see conclusion
	ME kit 4							
	FORD	combed pubic/Palm						see conclusion
	ME kit 5							
	FORD	public standard/Palm						
	ME kit 6							
	FORD	head hair standard						
	ME kit 7	Palm						

R. Paul McCauley, Ph. D.
Criminologist
4620 Lucerne Road
Indiana, Pennsylvania

February 12, 1997

Mr. Thomas Christensen
Attorney at Law
1000 S. Valley View Blvd.
Las Vegas, Nv. 89107

Re: Clare Palm vs. Las Vegas Metropolitan Police Department, et al.

Dear Mr. Christensen:

Please accept this letter as my report for the above-referenced case. I reserve the right to amend this report should additional information become available.

EXPERT QUALIFICATIONS

I am a professor of Criminology and former chairperson or the Department of Criminology, Indiana University of Pennsylvania (IUP). The university is a comprehensive, doctoral degree granting institution with an approximate enrollment of 15,000 students. The Department of Criminology offers bachelors, masters and doctorate degrees and has about 1,000 criminology majors. I teach and conduct research at all academic/degree levels.

I am a former Pennsylvania municipal police officer and in that capacity I engaged in high speed pursuits and police vehicular approaches and maneuvers. I am certified by the Pennsylvania State Police as a police Instructor. In my academic duties, as we;; as in my police operations and pursuits. Also , I have written or published more than 80 professional papers, books, chapters and technical reports many of which

address the issues concerning police pursuits, operations and policies.

For almost ten years I was a member of the faculty of the Southern Police institute, School of Police Administration, University of Louisville, In that position I lectured to more than 1,500 police commanders from around the United States, including state and municipal command officers, in the area of police operational policy formulation, which included police pursuits and use of force. More than 300 of these student officers have become police Chiefs. Also, I have received numerous letters and commendations from police executives, for my work and contributions to their agencies.

In 1987, I was a Fulbright Scholar, Australia. My lectures included university faculties in the schools of law, justice studies, business and to professional police commanders and security directors. My lecture area was the relationship/interaction between public police and private security in the prevention of crime.

I am a Board Certified Forensic Examiner and Diplomat, American College of Forensic Examiners and have been qualified as a police expert in state and federal courts in more than 20 states. In 1984, I was one of two finalists interviewed for the position of Commissioner of the Pennsylvania State Police. The Pennsylvania State House of Representatives issued a formal citation recognizing my career and contributions to law enforcement. A copy of my curricula vitae and list of previous cases, in which I have testified, are attached.

I have received a retainer in the amount of $1.500.00, to which I charge at the hourly rate of $125.00. Deposition and trial testimony are billed at $150.00 per hour, with a five hour minimum, plus expense portal to portal.

INTRODUCTION

I was retained by Attorney Thomas Christensen, to review the case material and render a professional opinion regarding the police operation which occurred on March 21, 1995, involving the above referenced parties. My retainer was paid in advance of my rendering any analysis or opinion and payment was not contingent upon my rendering a favorable opinion.

MATERIALS REVIEWED

For the preparation of this report, I have reviewed the following material. (Not listed in any order of importance.)

1. Copies of two police dispatch tapes regarding night or this incident.

2. Laser printed photocopies of all photographs pertaining to this case.

3. Defendants Las Vegas Metropolitan Police Department, Clark County, and Merl Sages' Federal Rules of Civi, l Procedure 26(f) production.

4. Plaintiff complaint.

5 Answer to Complaint.

6. Plaintiff Interrogatories.

7. Plaintiff's initial document and witness exchange at 26 (f) meeting.

8. Plaintiff's interrogatories to Defendant.

9. Plaintiff Clara Palm's Answers to Interrogatories.

10. Amended Complaint.

11. Motion to Dismiss

12. Plaintiff's Opposition to Motion to Dismiss

13. Las Vegas Metropolitan Police Department's Response to Request to Produce.

14. Las Vegas Metropolitan Police Department's Answers to Plaintiff's interrogatories.

15. Reply to the opposition to the Motion to Dismiss.

16. Copy of Las Vegas Metropolitan Police Department's Response to Second Request for Admission.

17. Copy of Las Vegas Metropolitan Police Department's Response to Second Request to Produce.

18.. Copy of Las Vegas Metropolitan Police Department's Answers to Plaintiff's Second Set of Interrogatories.

19. Merl Sage's Answer to Plaintiff's Interrogatories.

20. Motion to Compel.

OPINIONS AND RELEVANT COMMENTS

I offer the following opinions within a reason able degree of professional certainty, I reserve the right to amend this report as additional information is made available to me.

1. You asked if off-duty officer Merl Sage and/or the Las Vegas Metropolitan Police Department)lvmpd) violated accepted police practices in responding to this felony in progess. My first answer regarding Officer Sage is yes. Accepted police practices would require Officer Sage to escalate force in response to Palm's resistance. The use of force continuum escalates from (a) officer presence, (b) verbal commands, (c) Physical control/restraint, (d) chemical agents, (e) incapacitation, and (f) deadly force. When Officer Sage, off-duty and not in uniform, arrived at the scene he should have made his POLICE PRESENCE known by identifying himself as a police officer. This identification is done by verbally saying *police" and showing a badge or sign of authority., Officer Sage did not identify himself a a police officer and his subsequent commands to Palm were without authority, meaning Palm did not know that Officer Sage was issuing lawful commands as a police officer.

Las Vegas Metropolitan Police Department Use of Force policy states, "department members shall, whenever feasible, identify themselves and state their intention to shoot." It is my opinion that it was feasible for Officer Sage to verbally identify himself as police officer the moment he arrived at the scene. His first command should have be prefaced with "Police..." By identifying himself as a

Officer Sage would have sent a message to Palm that he (Sage) was a trained police officer and not just a citizen, Knowledge that Sage was police officer, would have been a significant fact in Palm's decision to compel with Sage's commands.

Likewise, it was feasible for Officer Sage, a trained police officer, to inform Palm that he was a police officer and that he would shoot. When Officer Sage arrived at the scene, it was feasible for him to say, for example, "Police, Stop." These two words identify the officer and command Palm to do somethingstop. Failure to stop or any threatening action from Palm should have been met with "Stop or I'll shoot." When the officer is at safe such commands. safely. If Officer Safe was nit at a safe distance and lost his tactical advantage, then the shooting emergency was created, in part, by the officer.

In my opinion Officer Sage violated LVMPD use of force policy and accepted police practices.

2. To answer the second part of your questions, regarding the LVMPD, I refer to police training, as I mentioned above, and supervision and discipline. The fact that the LVMPD had a use if force policy to guide Officer Sages' conduct is of no consequence if he was not trained in this policy. The failure of the LVMPD to train Officer Safe, in this policy, would violate accepted police practices.

Likewise, if LVMPD officer knew other officers did nit follow LVMPD policies and the LVMPD did not discipline/investigate them for these violations, LVMPD's failure would violate accepted police practices.

3. Looking at the shooting incident as a "snapshot in time," the shooting sequence/order need to be determined. Palm was shot twice. One entry wound was to the front if his body. A second entry wound was to the side/shoulder area and at a downward angel. If the frontal shot was the first shot in the officer's firing sequence, it wound appear that Palm was facing the officer and would tend to support the officer's statement that Palm was approaching him. Even , in such a situation, the officer may not have been justified in shooting an approaching Palm and that force may have been excessive under the circumstances.

If the side/shoulder shot was the first shot in the officer's firing sequence, it should appear that Palm was nit facing or approaching the officer but bent over and turning away. In such a situation the officer would not have been justified in shooting a non-threatening Palm and that force would have been excessive under the circumstances.

4. The failure of the LVMPD to produce polices, procedures, and training in the use of force; off-duty police officer operations. duties and responsibilities; officer self identification; and other information identified in the Motion to compel, which i requested, makes it impossible for me to determine what the written policies were in the LVMPD and their degree of conformity to accepted police practices. I am unable to determine the practices of the LVMPD and assess how/if the practices and customs of the LVMPD differ from their written policies and accepted police practices.

Indeed, the failure of the LVMPD to produce these essential and commonly produced documents, in such litigation, suggests that they may not have them, If the LVMPD does not have such documents, that would be contrary to accepted police practices.

The International Association of Chiefs of Police (IACP) Training Key #229 The Disciplinary Process: Internal Affairs Role, Vol. XIII, p. 61 states:

Perhaps the most exacting aspect of the police discipline process is the investigation of an allegation of misconduct.... The investigation must be seen by both the community and the police as being impartial and diligent.....

Confidence and trust in police integrity can be instilled in the public only through objective investigations.... A stable, uniform, and totally unimpeachable system if investigating complaints against any of the department's employees reinforces proper police conduct as well as assures the public of effective and honest police services.

The LVMPD's failure to provide internal affairs/police misconduct information, under these circumstance, reflects a system hiding behind the "blue veil" of police secrecy. If the LVMPD is not to engage in any activities necessary to "police the-police." Clearly, the community cannot see such a police system as being trustworthy, impartial diligent, and totally unimpeachable. The consequences can be devastating for the LVMPD and for the Community it serves or fails to serve, as the case may be.

Sincerely,

R. Paul McCauley, Ph.D. Bcfe

Enclosures: (2)

SUMMARY

This is not a Black and White case but a wrong done by the men in color. This was a young man killed and not allowed to defend himself in the court of law. Question of training and procedures of the Las Vegas Police Department need to be asked.

All of the evidence presented in the case is from actual statements of witnesses and actions taken by the Las Vegas Police department. The actions taken by Officer Merl Sage and the Las Vegas Police Department could no way be justified. If their actions are accepted ,the City of Las Vegas can not be safe with a force setting their on rules and allowing police officers to shoot at will.

For the wrongful death of Anthony Robert Palm , the plaintiff is seeking punitive damages against Officer Merle Sage and the Las Vegas Police Department.

CONCLUSION

Clara Palm
4452 Newton Drive
Las Vegas, NV

APPENDIX

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Appendix A

UNITED STATES COURT
DISTRICT OF NEVADA

ENTERED AND SERVED APR 15 1997

CLARA PALM,

Casw No. CV-S-95-1283LDG(R

Plaintiff

vs. JUDGMENT

LAS VEGAS METROPOLITAN POLICE DEPARTMENT, et al.,

Defendants.

Defendants Las Vegas Metropolitan Police Department, Clark County, and Officer Merl Sage having moved for summary judgment (#21), and the Court having duly considered and determined the issues in favor of Defendants,

IT IS HEREBY ORDERED AND ADJUDGED that judgment is granted in favor of Defendants and that Plaintiff takes nothing by way of this action.

DATED this_12_ day of April, 1997.

Lloyd D. George
Chief United States District Judge

Appendix A

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ENTERED AND SERVED APR 15 1997

Case No. CV-S-95-1283-ldg (RJJ)
ORDER

CLARA PALM,

v.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT, et al.,

Defendants.

DefendantsLasVegasMetropolitanPoliceDepartment (LVMPD), Clark County, and Officer Merl Sage move to dismiss and move for summary judgment (#21). Plaintiff Clara Palm opposes the motion (#23).

At about 6:00 a.m., on the morning of March 21, 1995, Anthony Palm, the Plaintiff's son, attacked and violently raped Patricia Woodall. Witnessing the rape from his home, Merl Sage, an off-duty police officer, called 911, pulled on a pair of jeans, picked up his duty firearm, and ran to the assistance of Woodall. When he approached the scene of the ongoing rape, Sage pointed his weapon at Anthony and ordered him to get off and to back away. Anthony looked at Sage, got off Woodall and pulled up his pants. Anthony did not move away, however, but quickly moved toward Sage.

Sage then shot Anthony twice. Palm.

brought this suit alleging Sage used unconstitutional force on her son and that Sage had engaged in a conspiracy to deprive her son of his rights.

MOTION TO DISMISS

In considering a motion to dismiss for failure to state a claim upon which relief can be granted, all material allegations in the complaint are accepted as true and are to be construed in the light most favorable to the non-moving party. Russell v. Landrieu, 621 F. 2d 1037 (9th Cir. 1980). A dismissal under Fed. R. Civ. P. 12(b) (6) is essentially a ruling on a question of law. North Star Int'l v. Arizona Corp. Comm'n, 720 F.2d 578 (9th Cir. 1983). For a defendant-movant to succeed, it must appear to a certainty that a plaintiff will not be entitled to relief under any set of facts that could be proven under the allegations of the complaint. Halet v. Wend Inv. Co., 672 F. 2d 1305 (9th Cir, 1982). Although allegations of a pro se complaint are held to less stringent standards than formal pleadings drafted lawyers, Haines v. Kerner, 404 U.S. 519 (1972) (per curiam), sweeping conclusory allegations do not suffice, Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988).

CLARK COUNTY

Clark County asserts that it must be dismissed since, as a matter of law, it cannot be held liable for actions or policies of the LVMPD.

To establish the liability of a governmental entity under S 1983, a plaintiff must show the entity itself was a moving force behind the constitutional violation.

[T]hus, in an official- capacity suit the entity's 'policy or custom' must have played a part in the violation of federal law." id.
The LVMPD is a separate municipal entity that can both sue andbe sued in its own name. Nev. Rev. Stat. 280.280. Clark County's only involvement with the
police department is through the police commission, which is composed of the Sheriff and various representative of both Las Vegas and Clark County. Nev. Rev. Stat. 280.130 Nevada has already determined, by statute, that the police commission's function is to supervise the

budget of LVMPD. Nev.Rev. Stat. 280. 190-270. As the police commission, and thus Clark County, has no other function related to the LVMPD and does not establish LVMPD's policies, neither can be held liable for the action or policies of the LVMPD. Bruttomesso v. Las Vegas M etro. Police D ept., 95 Nev. 151 (1979).

Palm responds that Clark County was commissioned as a body with an elected Sheriff to control and maintain the law enforcement..." Her argument ignores that, in 1974, Nevada created the LVMPD as a separate municipal entity to provide law enforcement and that Nevada further provided that the LVMPD could be sued in its own name. As noted in Bruttomesso, the function of the police commission, and thus of the County, is budgetary supervision. Accordingly, dismissal of Clark County is appropriate as a matter of law.

PUNITIVE DAMAGES

The LVMPD argues that any claim for punitive damages must be dismissed as to LVMPD since it is a municipal entity and municipalities are immune from punitive damages under the Civil Right Act of 1871 and 42 U.S.C. S 1983. Newport v. Fact Concerts, Inc.,473 U. S. 247 (1981). Palm cites Nev. Rev. Stat. 41. 032 for the proposition that LVMPD's immunity does not apply if "due care" was not used, and due care is a disputed issue.

Section 41.032 is irrelevant to whether the LVMPD may be held liable for punitive damages. That section addresses only whether the LVMPD is immune from suit when due care has been used. The appropriate statute is S41.035, in which Nevada has unambiguously stated that "[a]n award may not include any amount as exemplary or punitive damages." As Nevada has not waived punitive damages liability for its municipal entities, Palm's claim for punitive must be dismissed as to the LVMPD.

Palm's S 1985 (3) Claim

In her second cause of action, Palm alleges that Sage violated S 1985 (3),"acting in concert and under color of law, actually conspired to deprive Citizens, such as Anthony, of his constitutionally protected rights. Defendants assert that this claim must be dismissed as

Appendix A

Palm has not identified any other person with whom Sage acted in concert or conspired. Palm has failed to offer any argument in opposition. Her failure to address this issue constitutes her consent that her second cause of action must be dismissed. LR 7-2 (d). Moreover, the court agrees that Palm has not identified any person or entity with whom she alleges Sage conspired. As Sage could not conspire with himself, her second cause of action pursuant to S 1985 (3) must be dismissed.

MOTION FOR SUMMARY JUDGMENT

Defendants assert that they are entitled to summary judgment on Plaintiff's remaining claims since, as a matter of law, Sage's actions did not constitute an unconstitutional use of force. In considering a motion for summary judgment, the court performs "the threshold inquiry of determining whether there is the need for a trail---whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242,250 (1986). To succeed on a motion for summary judgment, the moving party must show (1) the lack of a genuine issue of any material fact, and (2) that the court may grant judgment as a matter of law. Fed. R. Civ. Pro. 56 (c); Celotex Corp. v.Catrett, 477 U. S. 317, 322 (1986).

A material fact is one required to prove a basic element of a claim. Anderson, 477 U. S. 477.at 248. The failure to show a fact essential to one element, however, "necessarily renders all other facts immaterial" Celotex, 477 U.S. at 323.

"[T]he plain language of Rule 56 (c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Id. "Of course, a party seeking summary judgment always bear the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to

interrogatories, and admissions on file, together with the affidavits, if any. which it believes demonstrate the absence of a genuine issue of material fact." Celotex, 477 U.S. at 323. As such, when the non-moving party bears the initial burden of proving, at trial, the claim or defense that the motion for summary judgment places in issue, the moving party can meet its initial burden on summary judgment "by 'showing'-that is, pointing out to the district court-that there is an absence of evidence to support the nonmoving party's case." Celotex, 477 U.S. at 325. Conversely, when the burden of proof at trial rest on the party moving for summary judgment, then in moving for summary judgment the party must establish each element of its case.

Once the moving party meets its initial burden on summary judgment, the non-moving party must submit facts showing a genuine issue of material fact. Fed. R. Civ. Pro. 56(e). AS summary judgment allows a court "to isolate and dispose of factually unsupported claims or defenses," Celotex, 477 U.S. at 323-24, the court construes the evidence before it "in the light most favorable to the opposing party." Adickes v. S. H. Kress & Co., 398 U. S. 144,157 (1970). The allegations or denials of a pleading, however, will not defeat a well-founded motion. Fed. R. Civ. Pro. 56(e); Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U. S. 574, 586-87 (1986).

Palm suggests that, on the morning of March 21, 1995, her son and Patricia Woodall "were having some kind of an altercation on a front lawn." This curt summary is an extreme understatement of the events preceding her son's death, and is

achieved only through an extremely liberal, if not deceptive, use of the evidence. Palm implies the "altercation" was some type of consensual activity, citing Woodall's statement that she told Anthony to "just act like your my boyfriend, I won't let them take you.' The context of Woodall's entire statement and of complete record , however, demonstrates that this statement was not of consent, but was nothing less than Woodall's attempt to save her own life.

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Having reviewed the entire record and all statements as a whole, rather than snippets taken out of any relevant context as Palm has done, shows that Woodall was taking a walk. Anthony followed her for some time in his vehicle and ignored her request to be left alone. At some point, Anthony left his vehicle, crossed to where Woodall was walking and attacked her, grabbing her by the neck and slamming her to the ground. He then kept shoving her head to the ground, punching her in the head and about her face continuously. To witnesses, it initially appeared as if two boys were having a fight. Although Woodall screamed and fought back as best she could, her efforts merely caused Anthony to inflict even greater force, grabbing her by the throat "like he was trying to rip my throat out." As recited by Woodall:

I'm please let me breathe, you gotta let me breathe and I thought I was going, that was, I was blacking out. I, I could fell the stage come out of blackout and I knew if I kept going that he would as keep going. The man wanted to kill me. He had, it was weird,--------something but he wanted to kill me. And while I was looking, all this happened in a matter of seconds -------, and as I had my head sideways trying to do this, I seen this house that was across the street right where his car was parked as a matter of fact. Above it was a two story a with window pane with no curtains there and the light was shining on him to where, um, you couldn't see inside of it and I said somebody's watching us and he looked up sideways and I said just act like your my boyfriend, I won't let them take you I thought maybe he would loosen up enough to where with his hand on my throat so I could breath and get my arms moving again or something

As can be seen when viewed in its proper context, Woodall was not suggesting she onsented to Anthony's conduct when she suggested he act like her boyfriend. Rather, the statement was a tactic inspired by the Anthony's prior violence that caused her to believe he would soon kill her. The statement was not a consent to being raped, but a ploy to save her life, to breathe again, Palm also cites the statement of one witness, Carol Ewing, that Woodall pulled her pants down A review of Ewing's entire statement shows, however, that not only did she recognize that Woodall was not a willing participant, but she admits that she never witnessed how Woodall's pants were pulled down.

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Having reviewed the record, and the lack of any evidence by Palm to the contrary, the court finds it undisputed that, on the morning of March 21 1995, Anthony rapeWoodall. He subjected her to sexual penetration against her will, using physical violence to render Woodall physically incapable of resisting. The minor variations of the witnesses' statements do not create an issue of fact whether decedent raped Woodall

. It is also undisputed that, upon witnessing the rape, Sage called 911, gave the phone to his wife, put on his Jeans, picked up his gun, and ran to the scene of the rape. He then ordered Anthony to get off Woodall and to back away. Anthony got off Woodall, and pulled up his pants.

Although Palm contends that an issue of material fact remains whether Anthony next took a "non-threatening" action, she does not offer any evidence to support her hypothesis. Rather, she offers only the hypothesis of her expert that it was possible that Sage's first shot hit her son in the side/shoulder and if his second shot hit her son in the chest, her son may not have been "facing or approaching the officer but bent over and turning away.

Notably, a review of the entire statement of Palm's expert indicates that he concedes that it was also possible Anthony was facing Sage and, if so "the officer may have been justified in shooting" Anthony. In addition, the expect does not preclude the possibility that even if Sage's first shot was to Anthony"s side/shoulder, her son was facing and approaching Sage. A

review of the record indicates that every person who witnessed the shooting saw Anthony move toward Sage, Sage testified that Anthony, after getting off Woodall and pulling his pants up, came toward him quickly, lunging at him. Sage's wife also testified that Anthony lunged at her husband after getting of Woodall. Ewing testified that Anthony moved quite quickly towards Sage without ever stopping. Another witness, Billy Mizel, also saw Anthony immediately move towards Sage after getting of Woodall. * Palm has not offered any

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* The court rejects Palm"s suggestion that an issue of fact exists because the witnesses differ whether Anthony "lunged" or merely moved quickly toward Sage. None of

evidence disputing that each of the witnesses saw her son face and quickly approach Sage after Sage had ordered him to quit raping Woodall.

Upon this record, the court readily finds that Sage did not use unconstitutional force. Sage witnesses and intervened in Anthony's savage and violent rape of Woodall, a rape Woodall believed she would not survive. When ordered to stop the sexual assault and to back away from the victim, Anthony instead rose from Woodall, pulled up his pants, and then moved quickly and directly toward Sage. Under these circumstances, Sage's use of force to stop Anthony was not unconstitutional.

Therefore, for good cause shown,

THE COURT ORDERS that Defendant's Motion to Dismiss and Motion for Summary judgment (#21) is Granted. Clark County is DISMISSED with prejudice. Plaintiff's Second Cause of Action pursuant to 42 U.S.C.s1985(3) is DISMISSED with prejudice. Plaintiff's claim for punitive damages against the Las Vegas Metropolitan Police Department is DISMISSED with prejudice. Summary judgment is GRANTED in favor of Defendants as to all of Plaintiff's claims.

DATED this 12 day of April, 1997

Lloyd D. George
Chief United States District Judge

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the witnessed dispute that, after decedent was ordered to stop raping woodall and to back off he instead moved quickly toward Sage.

Exhibit I

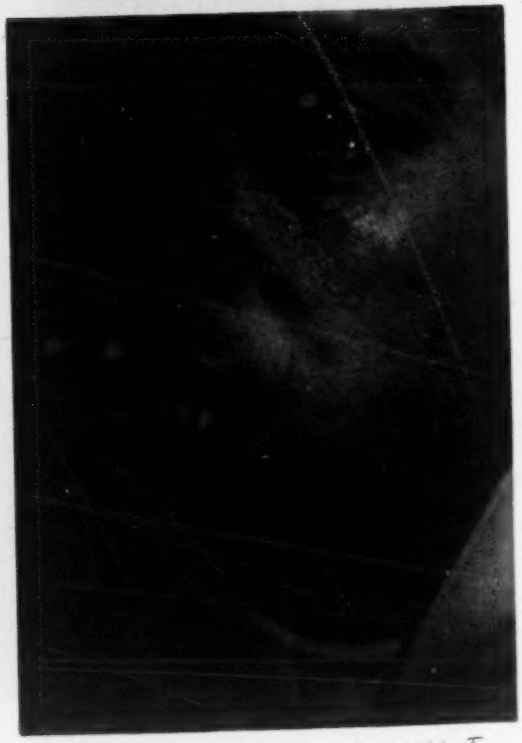

Exhibit I

Exhibit III

Exh. b.t

Appendix B

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 97-15896

D.C No. CV95-01283-LDG

CLARA PALM, individually and as surviving parent of Anthony Robert Palm. deceased.

Plaintiff-Appellant

vs.

*MEMORANDUM

LAS VEGAS METROPOLITAN POLICE DEPARTMENT; CLARK COUNTY; MERL SAGE

Defendants-Appellees.

Appeal from the United States District Court

for the District of Nevada

Lloyd D. George, Senior District Judge, Presiding

Submitted** March 17, 1998

Before: CHOY, SNEED, WIGGINS, Circuit Judges.

Clara Palm appeals the district court's order dismissing certain defendants and claims and granting the defendants' motion for summary judgment in her civil right action against defendants Clark County ("County"), the Las egas Metropolitan Police

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.** The panel finds this case appropriate for submission without argument pursuant to Fed. R. App. P. 34 (a) and 9th Cir. R.

Appendix B

Department ("LVMPD"), and Officer Merl Sage ("Sage") . 1 In that
action, Palm alleged that Sage used excessive force in fatally shooting her son, Anthony Palm. We have jurisdiction under 28 U.S.C. s 1291, and we affirm.

I. . Dismissal

We review de novo a district court's dismissal for failure to state a claim. See Tyler v. Cisneros, 136 F. 3d. 603, 607 (9th Cir. 1998). "A complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief." Id. Because the parties are familiar with the facts of this case, we need not recount them here.

A. Clark County

The district court dismissed the County as a defendant in this action, holding that, as a matter of law, it could not be held liable for the actions or policies of the LVMPD. Palm contends that the County is liable because it is directly responsible for the proper training and supervision of the LVMPD's employees. We agree with the district court.

A county may be held liable under s 1983 "only where its policies are the 'moving force [behind] the constitutional violation.' " City of Canton v. Harris, 489 U. S. 378, 389 (1998) (quoting Polka County v. Dodson, 454 U. S. 312, 326 (1981). In

1. Clara Palm does not appeal the district court's dismissal of her 42 U. S. C. s 1985 (3) claim against Sage.

this case, the County's only control over the LVMPD is budgetary supervision through the police commission. See Nev. Rev. Stat 280.190-270 (1987). The LVMPD and the county are separate entities -- the policies of the latter are not the "moving force" behind the actions of the former. See Nev. Rev. Stat. S 280.280 (1987). Consequently, the County cannot be held liable for the actions or policies of the LVMPD. Cf. Bruttomesso v. Las Vegas Metro. Police Dep't, 591 P 2d 254, 255-56 (nev. 1979).

B. Punitive Damages Claim

The district court also dismissed Palm's claim for punitive damages against the LVMPD. Palm argues that the LVMPD is responsible for any punitive damages because Sage's actions were willful, wanton, aad reckless. Once again, we agree with the district court.

In a S 1983 suit, a municipality may not be held liable for punitive damages unless expressly authorized by statute. See Newport v Fact Concerts, Inc. 783 U>S 247, 260n. 21 (1981).. Nevada Law is unambiguous: An Award for damages in a tort action against employees of the state or any political subdivision may not include punitive damages. See Nev. Rev. Stat. S 41. 035 (1995). Palm's reliance on Nev. Rev. S 41.032 is misplaced because that statute deals with immunity, not punitive damage. Accordingly, the district court did not err when it dismissed palm's claim for punitive damages against the LVMP

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II. Summary Judgment

We review a grant of summary judgment de novo. SeeWarren v. City of Carlsbad, 58 F. 3d 439, 441 9 (th Cir. 1995). We must determine "whether the evidence, viewed in a light most favorable to the nonmoving party, presents any genuine issues of material fact and whether the district court correctly applied the law." Id.

The district court granted the defendants' motion for summary judgment on the ground that Sage's actions did not amount to an un- constitutional use of force. Palm contends that there are multiple genuine issues of material fact as to whether Sage used excessive force against Anthony Palm. After reviewing the record, we conclude that summary judgment was properly granted.

A s 1983 claim requires: (1) a violation of rights protected by the Constitution (2) by someone acting under color of state law. See Gibson v. United States, 781 F. 2d 1334, 1338 (9th Cir. 1986). Claims against polices officers for the use of excessive force are analyzed under the Fourth Amendment's "objective reasonableness" standard. See Graham v. Connor, 490 U.S. 386, 388 (1989). In determining reasonableness, it must be remembered that "police officers are often forced to make split-second judgment--in circumstances that are tense, uncertain, and rapidly evolving--about the amount of force that is necessary in aparticular situation." Id. at 397. A police officer has a right to use such force, including deadly force, as is necessary under the circumstances to protect himself and others from what be reasonably believes to be a threat of great bodily injury or harm.

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See Tennessee v. Garner, 471 U.S. 1, 11 (1985) ;: Acosta v. City &
County of San Francisco, 83 F. 3d 1143, 1145 n. 3 (9th Cir. 1996).

Palm first argues that Sage's use of deadly force was unjustified because her son was not armed at the time of the shooting. It is clear, however that a suspect need not have a weapon to pose a threat to an officer. See
Forrett v. Richardson, 112 F. 3d 416, 420 (9th Cir. 1997) ("{T} he suspect need not be armed or pose an immediate threat to the officers or others at the time of the shooting.") , Cert. denied, 1998 WL 138889
(U.S. Mar. 30,1998 (no. 97-7069). The relevant inquiry is whether Sage could have reasonably believed that either he or the victim was threatened with great bodily injury or harm. See Garner, 471 U.S. at 11.

Every witness to the events in question stated that they saw Anthony Palm either move toward or lunge at Sage after Sage ordered him to move away from the victim. Patricia Woodall. Sage had just witnessed Anthony Palm brutally attack and rape Woodall. Given the serious
injuries suffered by the victim, Sage had good reason to believe that Anthony Palm was violent and that deadly force was needed to control the situation. Under these circumstances, he acted reasonably when he fatally shot Anthony Palm. Palm's submission of criminologist R Paul McCauley's affidavit does

not create a triable issue of material fact Because the affidavit neither disputed the various accounts of the witness nor preclides the likelihood that Anthony Palm was advancing toward Sage..

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Palm also argues that Sage's actions were unreasonable because they contravened the guidelines and policies of the LVMPD regarding the use of deadly force. It is true that Sage did not identify himself as an officer or state his intention to shoot. The LVMPD guidelines, however, require those actions only "whenever feasible." In this case Anthony Palm forced Sage to act quickly when he advanced toward the officer. As Sage testified, he did not have the opportunity to identify himself before he had to act: it was not "feasible" for him to announce that he was a police officer. Moreover, the fact that Sage's gun was drawn gave at least some indication to Anthony Palm of Sage's intention to shoot. Thus, Sage did not act in contravention of the LVMPD's guidelines and policies.

Finally, Palm argues that Sages actions were unreasonable because the were reacially motivated. The only evidence offered in support of this claim, is the transcript of Sage's 911 call: "a black is raping a female across the street." This evidence is grossly insufficient to show that Sage's response was racially motivation. Palm fails to create a triable issue of material fact.

In light of the foregoing, We are convinced that Sage did not use unconstitutional force. 2 See Graham, 490 U.S. at 388. He acted reasonably under the circumstances of this unfortunate case. Palm has failed to show any genuine issues of material

2 Because we conclude that there was no constitutional violation, we need not reach the municipal liability issue. See Scott v. Henrich, 39 F. 3d 912, 916 (9th Cir. 1994). fact. Thus, the district court did not err when it granted the defendants' motion for summary judgement.

AFFIRMED